

1 MR. FLUMENBAUM: You may answer.

2 A. I didn't feel like the input was going to
3 be worth the extra delay.

4 Q. So the only commissioner that you cared
5 about was Mr. Clayton, correct?

6 MR. TENREIRO: Object to form.

7 A. That's not true.

8 Q. Do you know whether Mr. Clayton had a
9 relationship with [REDACTED] or Ether or any of the
10 entities in the Ether network prior to his joining
11 the SEC?

12 A. Not that I'm aware of.

13 Q. Are you aware that Sullivan & Cromwell
14 represented [REDACTED]

15 MR. TENREIRO: Objection to form. Go
16 ahead.

17 A. I didn't know if they were a firm client.
18 I think some of the people at the [REDACTED]
19 meetings had a Sullivan & Cromwell background. I
20 don't know if they were still there appearing as,
21 you know, the law firm for [REDACTED] So I wasn't
22 aware if they -- of their relationship.

1 Q. Didn't you talk to Rebecca Simmons
2 directly about [REDACTED]

3 A. I don't recall that.

4 Q. Didn't you get e-mails from Rebecca
5 Simmons about [REDACTED]

6 A. Not that I recall.

7 Q. And in response to a question from
8 Mr. Figel you mentioned that Mr. Clayton did not
9 instruct you to contact Mr. [REDACTED] is that correct?

10 MR. TENREIRO: Objection to form.

11 A. That's right.

12 Q. Did Mr. --

13 A. That's my recollection.

14 Q. Right.

15 Did Mr. Clayton at any time ask you to
16 meet with anybody relating to Ether or [REDACTED] or
17 the Ethereum Foundation?

18 MR. TENREIRO: So just discuss, you know,
19 if any final directive, but not any back and forth
20 you might have had with him about that question.

21 A. I don't recall him giving me a directive
22 of that sort.

1 Q. I'm not suggesting a directive. Did he
2 suggest to you that it would be useful for you to
3 talk to the people behind [REDACTED] and behind
4 Ether?

5 MR. TENREIRO: I'm going to instruct the
6 witness not to answer that question.

7 MR. FLUMENBAUM: On what basis?

8 MR. TENREIRO: On deliberative process.
9 You're asking him if they had a conversation as to
10 whether this or that might be useful, and that's
11 deliberation. If you are asking him for a final
12 directive, do this, don't do that, he can answer.

13 MR. FLUMENBAUM: Did Mr. Clayton ever
14 suggest to you that it would be important to him
15 for you to talk to somebody for Ether or [REDACTED]

16 MR. TENREIRO: I'm going to instruct the
17 witness not to answer that question on the basis of
18 deliberative process.

19 MR. FLUMENBAUM: Did -- you mentioned the
20 Ethereum Alliance earlier today; do you recall
21 that?

22 A. I think the Ethereum Enterprise Alliance?

1 Q. Yes.

2 A. I was asked questions about that.

3 Q. Right. And you said you were not aware
4 when you joined the SEC whether Simpson Thacher was
5 a member of that alliance, correct?

6 A. I didn't know the alliance existed let
7 alone Simpson having any role with it.

8 Q. When did you first learn that Simpson had
9 a role in the Ethereum Alliance?

10 MR. TENREIRO: Object to form.

11 MS. KELLY: Object to form.

12 A. About a month or two after I left the SEC.

13 Q. So while you were at the SEC it's your
14 testimony that you were totally unaware that
15 Simpson Thacher was a member of the Ethereum
16 Alliance?

17 A. That's right.

18 Q. When you did your due diligence on Ether,
19 did anyone review who the members of the Ethereum
20 Alliance were?

21 MR. TENREIRO: Object to form.

22 MR. FLUMENBAUM: You may answer.

1 A. I didn't know the Ethereum Alliance
2 existed. So --

3 MR. TENREIRO: Wait a second. Go ahead.

4 A. -- let alone anyone doing diligence with
5 respect to the Ethereum Alliance.

6 Q. In the due diligence that you were having
7 done before your speech no one mentioned to you the
8 Ethereum Alliance?

9 MR. TENREIRO: Just answer yes or no.

10 A. Well, I want to make sure he asks the
11 correct question. I think it's the Ethereum
12 Enterprise Alliance. You keep saying Ethereum
13 Alliance. I think it's a --

14 Q. Yeah. I'm skipping the --

15 A. I think it's a narrower focus than all
16 Ethereum. I think it's for enterprise use. That's
17 based on what I've learned since I left the SEC,
18 and your question about the Ethereum Enterprise
19 Alliance is what?

20 Q. While you were doing your due diligence
21 for your speech no one mentioned the Ethereum
22 Enterprise Alliance to you?

1 A. Not that I recall.

2 Q. Did -- now, when you were doing your due
3 diligence did you learn what percentage of the
4 original Ether sales were owned by Mr. Buterin?

5 MR. TENREIRO: Objection to form and first
6 let's take this one yes or no, please.

7 A. I believe we did.

8 Q. And what fact did you learn?

9 A. I think we learned the amount, but I don't
10 recall the number.

11 Q. Was it approximately 20 percent of the
12 initial offering?

13 MR. TENREIRO: Object to form. Go
14 ahead.

15 A. I don't -- I don't recall. So I'd be
16 speculating now.

17 Q. But you knew that at the time you made
18 your speech?

19 A. Yes.

20 MR. TENREIRO: Sorry. I object to form.
21 You knew what, the amount --

22 MR. FLUMENBAUM: Yes.

1 MR. TENREIRO: -- or the 20 percent? He
2 knew the amount.

3 MR. FLUMENBAUM: He knew the amount.

4 MR. TENREIRO: Whatever it was.

5 BY MR. FLUMENBAUM:

6 Q. And did you know the value that
7 Mr. Buterin had at the time you made your speech?

8 A. If I knew the amount, I would probably
9 also know the approximate value.

10 Q. And you are aware that initially a portion
11 of Ether had been premixed; is that correct?

12 A. What do you mean by premixed?

13 Q. That prior to the initial offering they
14 had premixed a certain amount of the coin Ether.

15 MR. TENREIRO: Object to form.

16 A. I'm not sure what you mean by premixed.
17 Do you mean -- can you be more specific about what
18 you're trying to say?

19 Q. You were aware, were you not, that there
20 were a concentration of miners involved in
21 connection with Ether, correct?

22 MR. TENREIRO: Objection to form.

1 A. I don't know what you mean by
2 concentration, but I think we tried to understand
3 what the mining network looked like.

4 Q. And do you have an understanding that the
5 mining network was primarily in China?

6 MR. TENREIRO: Objection to form.

7 A. I'm not sure we made that conclusion.

8 Q. Did you have information as to where the
9 mining network was predominant?

10 A. I think we may have asked about that, but
11 I don't recall what we concluded.

12 Q. Do you know today whether Ether is
13 predominantly mined in China?

14 A. I don't.

15 Q. Did it make a difference in your concept
16 of sufficiently decentralized if the concentration
17 of mining was greater in China?

18 MR. TENREIRO: Just answer, you know, to
19 the extent there's a final view on that point when
20 you speak. I think he's talking about the speech.

21 A. At the time I gave the speech did I have a
22 view as -- or was that important to me as I gave

1 the speech?

2 Q. Yes.

3 A. I think that would have been a factor we
4 took into account. I don't recall how much we
5 weighed it.

6 Q. Well, who gave you the information as to
7 the concentration of mining?

8 MR. TENREIRO: He already said he didn't
9 know that, but okay. Object to form.

10 A. On all these questions around the
11 diligence we did on Ethereum it was a variety of
12 folks on our staff talking to market participants.

13 Q. Well, take a look at Exhibit 27.

14 MR. TENREIRO: Marty, can you tell me what
15 it was so I can find it, please.

16 MR. FLUMENBAUM: It's Exhibit 27. It's
17 the series of e-mails that have the questions.

18 MR. TENREIRO: They didn't give him
19 versions with numbers.

20 MR. FLUMENBAUM: One of the questions is
21 are you familiar with any current concentrations or
22 lack thereof of holdings of Ether, what about

1 concentrations of mining power; is that correct?

2 A. That is one of the questions.

3 Q. Right. And you asked that question on
4 June 7th, did you not?

5 A. I don't know if I asked it or if other
6 staff members asked it, but these were the
7 questions we intended to ask.

8 Q. And you asked it at a meeting on June 8th,
9 correct?

10 A. Again, same answer.

11 Q. Prior to June 8th did you have answers to
12 any of these seven questions?

13 A. I think we had a sense of these and what
14 possible answers there may be, but I think a lot of
15 the diligence was trying to confirm our
16 understanding.

17 Q. Well, after June 8th what did you do to
18 confirm whatever information you received from
19 Mr. Buterin and the others who were at your
20 meeting?

21 MR. TENREIRO: And discuss only external
22 conversations or steps.

1 A. Yeah, but I think he asked me what did I
2 or the SEC do. I mean, some of this would have
3 been the staff looking at public documents. You
4 know, with respect to Ethereum one of the things
5 that was somewhat compelling was it was fairly
6 transparent. Most of the decisions and information
7 around the network were posted on places like
8 GitHub or Reddit.

9 Q. So you looked at public documents?

10 A. I believe that would be part of the
11 process.

12 Q. And do you remember any of those public
13 documents that you looked at?

14 A. I personally did not.

15 Q. You had your staff look at it?

16 A. Yes.

17 Q. And did any of the documents that were
18 reviewed did they talk about the concentration
19 levels of mining and -- let's start with that.

20 MR. TENREIRO: Actually, no. Objection to
21 form and I'm going to instruct him not to answer.
22 He said he didn't look at the documents himself.

1 So if he knows what's in the documents, he got that
2 from deliberations with the staff about the speech.
3 So I'm going to instruct him not to answer the
4 question.

5 MR. FLUMENBAUM: You're going to instruct
6 him not to answer that?

7 MR. TENREIRO: He already told you he
8 didn't look at the documents.

9 MR. FLUMENBAUM: What -- what did the
10 Buterin group, if I may call them that, say to you
11 at your meeting about the concentrations of mining
12 power?

13 A. I don't recall the specific answers, but,
14 again, I think they were consistent with the work
15 the staff had done to that point. You know, going
16 beyond that I'd have to get into some of the
17 deliberations.

18 Q. I don't want you to -- I want to know what
19 they told you. What did they say to you? What
20 were their words?

21 A. Again, I don't remember their words, but
22 they would have answered this question to the best

1 of their ability.

2 Q. Well, did they -- did the issue of China
3 come up during this conversation?


4 A. I don't specifically remember that.

5 Q. Now, you asked about current
6 concentrations or a lack thereof of holdings of
7 Ether; is that correct?

8 A. Yes.

9 Q. What did Mr. Buterin say were his -- was
10 his current concentration?

11 A. I don't -- I don't recall what he said
12 about his own holdings.

13 Q. And what about Mr. 

14 A. Same thing.

15 Q. You don't remember what he said?

16 A. (Witness shaking head.)

17 Q. What about the Ethereum foundation?

18 A. I don't remember the numbers.

19 Q. What about Ethereum Switzerland?

20 A. Same thing.

21 Q. Do you know who funds the Ethereum
22 foundation?

1 MR. TENREIRO: Objection to form.

2 A. I don't know specifically who funds it.

3 Q. Did they talk about who funds the Ethereum
4 foundation?

5 A. Well, my understanding was that they had
6 some Ethereum, but I don't know exactly how they
7 funded it.

8 Q. Did -- were you aware that [REDACTED]
9 funded some on the Ethereum foundation?

10 A. No.

11 MR. TENREIRO: Objection to form.

12 THE WITNESS: Sorry.

13 MR. TENREIRO: No problem.

14 THE WITNESS: No.

15 Q. Did you have any understanding of what
16 percentage Buterin, [REDACTED] the Ethereum Foundation,
17 and [REDACTED] had together in terms of
18 concentration?

19 MR. TENREIRO: Let's start with yes or no.

20 A. All those people put together?

21 Q. Yeah.

22 A. I would have a sense of that, yes.

1 Q. And what was the total concentration?

2 A. I don't recall.

3 Q. Was it greater than 30 percent?

4 A. I don't recall.

5 Q. You mentioned earlier that 30 percent
6 would have been a substantial number in your mind;
7 is that correct?

8 MR. TENREIRO: Object to form.

9 A. Did I mention that earlier?

10 Q. I thought you did.

11 MR. TENREIRO: Objection to form. Marty,
12 he was talking about one person then. You're
13 mischaracterizing what he said. Go ahead.

14 A. So I -- I don't think I said that, but
15 what's your question?

16 Q. My question is was it your understanding
17 that together they had more than 30 percent?

18 A. And I don't remember their holdings
19 together.

20 Q. Did you make any changes in your speech
21 based on anything that you learned on June 8th?

22 A. Not that I recall.

1 Q. Now, you testified earlier that the SEC
2 had policy against owning digital assets for quite
3 some time; do you remember that?

4 A. Do I remember testifying to that?

5 Q. Yes.

6 A. Yes.

7 Q. And when did you first become aware that
8 the SEC had a policy against owning digital assets?

9 MR. TENREIRO: Object to form and to
10 relevance. This is way beyond what she ordered you
11 to ask him about. Go ahead.

12 A. When did I become aware of that policy?

13 Q. Yes.

14 A. While I was at the SEC, probably the first
15 year I was at the SEC.

16 Q. When you joined the SEC in May of 2017 did
17 the SEC have a policy against owning digital
18 assets?

19 A. I'm not sure.

20 Q. Isn't it a fact that the policy against
21 owning digital assets wasn't instituted until 2018?

22 MR. TENREIRO: Objection to form.

1 A. I'm not sure that's right.

2 Q. When do you think it was instituted?

3 MR. TENREIRO: Objection to form.

4 A. I think a policy was adopted probably
5 around the time you're suggesting, but prior to
6 that time I think if you had any financial interest
7 in something you were involved in you were to
8 recuse yourself or not have the interest. So I
9 think the policies are broad enough to, you know,
10 stop people from having interest in assets that
11 they were involved in.

12 Q. You're talking about two different things,
13 aren't you? You're talking about a conflict of
14 interest policy as opposed to a policy against
15 owning digital assets, correct?

16 MR. TENREIRO: Objection to form.

17 A. I'm talking about policies that might
18 restrict someone from owning digital assets.

19 Q. Did the policy against conflicts of
20 interest restrict people from owning digital assets
21 if they didn't have any conflicts of interest?

22 MR. TENREIRO: Objection to form.

1 A. I'm not sure how the policy would have
2 been applied at that point.

3 Q. When -- you stated that you did not own
4 any digital assets, correct?

5 A. Correct.

6 Q. Did you own stock in any company that did
7 own digital assets?

8 MR. TENREIRO: Are you talking about at
9 the time at the SEC?

10 MR. FLUMENBAUM: Yeah.

11 MR. TENREIRO: Okay.

12 A. Not that I'm aware of.

13 Q. Did you own stock in Alibaba?

14 A. No.

15 Q. Did you own stock in Ant Financial?

16 A. No.

17 Q. Did you list Alibaba and Ant Financial on
18 your disclosure forms?

19 A. I don't think so.

20 Q. Maybe I'm wrong. Let me mark --

21 MR. FLUMENBAUM: What's the next exhibit?

22 THE REPORTER: 37.

1 (Hinman Exhibit 37 was marked
2 for identification.)

3 BY MR. FLUMENBAUM:

4 Q. Let me mark as 37 a series of executive
5 branch personnel public financial disclosure
6 reports I believe from 2017 through 2020.

7 MS. PROSTKO: And for the hotseat, this is
8 document 058 that was sent earlier today.

9 MR. TENREIRO: We're going to designate
10 the conversation about this as highly confidential.

11 MR. FLUMENBAUM: Okay.

12 MR. TENREIRO: Thank you. Do you want me
13 to hand him this whole thing?

14 MR. FLUMENBAUM: I handed him --

15 THE WITNESS: I gave that to the court
16 reporter.

17 MR. FLUMENBAUM: Oh yeah. Take the whole
18 exhibit.

19 MR. TENREIRO: Keep it with this. Okay.
20 All right.

21 BY MR. FLUMENBAUM:

22 Q. Are these your -- are these copies of your

1 financial disclosure forms, Mr. Hinman?

2 A. I haven't flipped through all 50 pages,
3 but they look like they could be. Probably are.

4 Q. Let me -- let me refer you to page -- it's
5 the third page, it's on the back of the third page.
6 It says "For Filer's source of compensation
7 exceeding 5,000 in a year," and it lists Alibaba
8 and Ant Financial Services on that.

9 MR. TENREIRO: Objection to form. You
10 asked him if he owned stock.

11 MR. FLUMENBAUM: Well, he can explain
12 what --

13 A. What's your question?

14 Q. Does this indicate that you own stock?

15 A. No.

16 Q. What does this indicate?

17 A. That those firms -- those companies paid
18 Simpson Thacher fees while I was at Simpson
19 Thacher.

20 Q. Thank you.

21 Let me show you a document which is dated
22 January 15, 2014 and it's SEC production

1 No. 1345799. We'll mark this as -- what are we up
2 to? 38?

3 MS. PROSTKO: 38. And for the hotseat
4 this is document 040.

5 (Hinman Exhibit 38 was marked
6 for identification.)

7 BY MR. FLUMENBAUM:

8 Q. Have you ever seen this document before
9 today?

10 A. I may have seen this. I don't recall
11 specifically.

12 Q. Am I correct, sir, that this is a policy
13 with respect to ethics conflicts among the staff,
14 correct?

15 A. Right.

16 MR. TENREIRO: Object to form.

17 Q. And this policy doesn't prohibit anybody
18 from owning Bitcoin; isn't that correct?

19 MR. TENREIRO: Objection to form and
20 mischaracterizing, the document speaks for itself.

21 A. Does it prohibit owning Bitcoin? I'm
22 sorry.

1 Q. Yes.

2 A. Well, again, looking at this quickly, "I
3 own Bit-" -- the document has a question, "I own
4 Bitcoin, have been assigned to part of a working
5 group at the SEC making recommendations with
6 respect to Bitcoin, can I do this." "Answer: No."
7 Then it goes on to cite parts of the U.S. code that
8 say federal employees are -- prohibits all federal
9 employees from working on any particular matter
10 where they may have a direct or particular effect
11 on the employees's financial interest, and then
12 they go on to give examples.

13 Q. So am I correct, sir, that if you were not
14 involved in making recommendations as to how to
15 regulate Bitcoin, you would be able to own Bitcoin
16 by the SEC?

17 MR. TENREIRO: Objection to form. You're
18 asking him to give you a legal opinion --

19 MR. FLUMENBAUM: Come on. Object to form
20 and let's move on. No speeches.

21 A. I'm sorry. Could you ask your question
22 again?

1 Q. Yeah. Does this refresh your recollection
2 that employees of the SEC unless they had a
3 conflict of interest were permitted to own digital
4 assets?

5 MR. TENREIRO: Object to form.

6 A. Again, if they were not involved in the
7 space in any way, which, you know, that's a pretty
8 broad -- SEC views these things pretty broadly. So
9 potentially I think you could own Bitcoin if you
10 were involved in something completely away from it.

11 Q. And would you actually need permission to
12 buy Bitcoin if you were in that position of not
13 having anything to do with the regulation of
14 Bitcoin?

15 MR. TENREIRO: Objection to form.

16 A. I'd have to refresh myself on the
17 securities clearance procedures. If you buy
18 securities you're supposed to get them precleared.

19 Q. And am I correct that digital assets were
20 not covered by the securities clearance form until
21 2018?

22 MR. TENREIRO: Objection to form.

1 A. Again, I'll take your word for that, but

2 I --

3 Q. Didn't you help write the policy in 2018?

4 MS. KELLY: Object to form.

5 MR. TENREIRO: Object to form. Go ahead.

6 A. I don't remember specifically helping on
7 the policy. I probably had conversations with
8 people on the staff about it.

9 Q. I want to point your attention to also it
10 says in this document that the "OEC has been
11 informed that the status of Bitcoin as either
12 currency or securities is undetermined at this
13 time"; do you see that?

14 A. Yeah.

15 Q. And as far as you knew, that was true?

16 MR. TENREIRO: Objection to form.

17 A. With respect to the ethics office? The
18 document speaks for itself.

19 Q. Did there come a time that the status of
20 Bitcoin as either currency or securities changed?

21 MR. TENREIRO: Objection to form.

22 A. For what purpose? For the purpose of the

1 policies or in general? In what context?

2 Q. Did the SEC ever determine that the status
3 of Bitcoin was either a currency or a security?

4 MR. TENREIRO: Marty, objection. He
5 wasn't even at the SEC then. You're asking him
6 about 2014 policies. This is just -- objection.

7 MR. FLUMENBAUM: Go ahead.

8 A. What's your question?

9 Q. My question was did this -- did the status
10 of Bitcoin change at any time after 2014 as to
11 whether it was viewed as a currency or a security?

12 A. For what purpose?

13 MR. TENREIRO: Objection to form.

14 Q. For any purpose.

15 A. For purposes of the ethics rules I think
16 it looks like it may have, but I'm not sure they
17 were making a determination of the applicability of
18 the federal securities laws. They were applying
19 the ethics rules they thought would be prudent to
20 have at the commission.

21 Q. Well, at the time this was written were
22 the ethics rules applied to currencies?

1 MR. TENREIRO: Objection to form.

2 A. Yes, if -- if you had a conflict.

3 Q. But not if you were just buying fiat
4 currency, correct?

5 MR. TENREIRO: Objection to form.

6 A. I think I answered that.

7 (Hinman Exhibit 39 was marked
8 for identification.)

9 BY MR. FLUMENBAUM:

10 Q. Let me show you a document we'll mark as
11 Exhibit 39, which is an office of ethics counsel
12 statement dated January 16th, 2018.

13 A. Thank you. Okay.

14 MR. TENREIRO: Take a moment to look at
15 it.

16 Q. Have you seen this document before, sir?

17 (Witness reviewing document.)

18 A. Yes.

19 Q. Does this refresh your recollection the
20 first time -- this is the first time that the SEC's
21 supplemental ethics regulations applied to digital
22 assets?

1 MR. TENREIRO: Objection to form.

2 A. Again, I don't know the SEC's policies
3 prior to my time there or whether this was the
4 first instance, but I think this was one of the
5 first comprehensive treatments of the subject.

6 Q. And am I correct that this -- that this --
7 ethics regulations do not prevent SEC employees
8 from buying digital assets; is that correct?

9 MR. TENREIRO: Sorry. I think -- I want
10 the record to reflect he said "I think this is one
11 of the comprehensive treatments of the subjects for
12 the ethics" and that was not reflected in the
13 record.

14 THE REPORTER: Because they were talking
15 on top of each other.

16 THE WITNESS: Sorry.

17 MR. FLUMENBAUM: Sorry.

18 A. What's your second question?

19 MR. FLUMENBAUM: Can you repeat my
20 question.

21 (Record read as requested.)

22 MR. TENREIRO: Object to form.

1 A. I'd have to study it again, but I think
2 there's not an outright prohibition. I think it is
3 similar to the (indecipherable) policy if there's a
4 conflict involved you shouldn't be owning the
5 asset.

6 Q. And am I correct that preclearance is
7 permitted under this policy?

8 A. Again, you've probably studied this
9 document more than I have. I think it's -- I think
10 preclearance is required, yes.

11 Q. Did you have any role in the creation of
12 this document or the policy?

13 A. Not a very significant role. This was
14 something that I remember the chairman's office
15 discussing, and I thought it was a good idea.

16 Q. Did anyone consult with you as to whether
17 this impacted your views as to whether a digital
18 asset was a currency or a security?

19 A. Did anyone ask me that?

20 Q. Yeah.

21 A. Or did it have that impact? No.

22 Q. Did you have to approve any SEC employees'

1 applications to purchase digital assets?

2 MR. TENREIRO: Object to form.

3 A. No.

4 Q. Who would be responsible for that
5 approval?

6 A. I think this office that generally reviews
7 people's security transactions.

8 Q. Now, you testified earlier that at the
9 time you joined the SEC you had never heard of XRP,
10 correct?

11 A. I don't think I had.

12 Q. Had you ever heard of Ripple?

13 A. I don't remember hearing of Ripple prior
14 to the SEC.

15 Q. When do you recall first learn about
16 Ripple?

17 A. I'm not exactly sure. It's probably
18 sometime in 2017 or early '18.

19 Q. And the same question with respect to XRP?

20 A. Same answer.

21 Q. Now, did -- were you aware that Ripple
22 entered into a settlement with the Department of

1 Treasury?

2 MR. TENREIRO: Objection to form.

3 A. Could you be more specific?

4 Q. Well, were you aware that -- did you learn
5 at some point in 2017 or 2018 that Ripple had
6 entered into a settlement agreement with the
7 Department of Treasury in connection with its
8 operations?

9 MR. TENREIRO: Let's limit that to things
10 you might have learned from outside parties such as
11 from Ripple's counsel, for example.

12 MR. FLUMENBAUM: Well, I want to know if
13 he learned that fact from anybody.

14 MR. TENREIRO: Let's answer yes or no,
15 then, if we're going to do --

16 A. I think the first I had heard of that was
17 potentially in a meeting with XRP and its counsel
18 where they mentioned that.

19 MR. FLUMENBAUM: Let me mark as Exhibit 40
20 a settlement agreement which was entered into in
21 2015. This is 40?

22 THE REPORTER: 40.

1 (Hinman Exhibit 40 was marked
2 for identification.)

3 BY MR. FLUMENBAUM:

4 Q. This is marked RPLI-SEC-1207 through 2021.
5 My question for you is when was the first time that
6 you saw this agreement?

7 A. I don't think -- today, right now.

8 Q. So as of -- prior to today you never saw
9 this agreement?

10 A. Not that I can recall, no.

11 Q. I believe you testified earlier that you
12 were involved in FSOC and regulations relating to
13 other agencies; is that correct?

14 A. That's right.

15 Q. And you're aware that the Department of
16 Treasury has its own set of regulations governing
17 virtual currencies?

18 MR. TENREIRO: Objection to form.

19 A. I think there are statutes and rules that
20 different agencies administer with respect to money
21 laundering and know your customer.

22 Q. Did you ever hear of a designation called

1 money services business?

2 A. Money transfer business, money services
3 business, yes.

4 Q. And are those under the exclusive
5 regulation of the Department of Treasury?

6 MR. TENREIRO: Objection to form.

7 A. I don't think so, but exclusive meaning in
8 that area of transferring money or that's the only
9 regulator in the world they have to comply with?

10 Q. Have you ever reviewed the regulations
11 relating to money service businesses?

12 A. My understanding of money service
13 businesses would be that that's an area that often
14 is regulated at the state level, like the New York
15 Department of Financial Services if people are
16 transferring money, and if you are a public company
17 doing that you might have to comply with their
18 regulations and the SEC regulations and if you're a
19 part of a bank you'd have banking regulations. So
20 there's a whole panoply of regulations that may
21 apply to somebody that's engaged in that business.

22 Q. Did Ether -- was Ether subject to any

1 regulations from the Department of Treasury?

2 MR. TENREIRO: Object to form.

3 A. I don't know what Treasury had applied in
4 terms of their money laundering rules to Ether. I
5 don't know off the top of my head.

6 Q. And what about with respect to Bitcoin?

7 MR. TENREIRO: Object to form.

8 A. Same answer. I'm not sure how they are
9 applying those rules to those two assets.

10 Q. Now, you mentioned in response to
11 Mr. Figel's questioning that you were not aware of
12 any rulemaking proceedings that you were involved
13 in in connection with digital assets; is that
14 correct?

15 MR. TENREIRO: Object to form.

16 A. Rulemaking proceedings is very broad. So,
17 you know, we did a lot of rulemaking while I was at
18 the SEC in my division and in other divisions.
19 Would they -- you asked broadly would they apply to
20 digital assets. If someone was in the business of,
21 you know, mining Bitcoin or pick a digital asset
22 business and they were a registered company with

1 us, the rulemakings would be relevant to them in
2 terms of disclosures. So you're asking a very
3 broad question. If you mean are there specific
4 digital asset rules -- rulemakings that I was
5 involved in, I don't think we had a specific
6 rulemaking per se.

7 Q. That's what I was getting at.

8 A. Okay.

9 Q. And you also mentioned no action letters?

10 A. Right.

11 Q. Were there any no action publicly -- no
12 action letters approved in 2017 that related to the
13 applicability of digital assets to securities laws?

14 A. I don't know if anyone sought one in 2017.
15 There were some people trying to use blockchain
16 technology for stock transfers. I don't know if
17 they got a no action letter, but some of that would
18 precede a little of my time all 2017.

19 Q. Well, the first no action letter that I
20 see under your regime was in 2019. Am I missing
21 something?

22 MR. TENREIRO: Objection to form.

1 A. I'd have to go back and look at the no
2 action letters to see, you know, each one that was
3 granted and dates.

4 Q. Do you recall any that specifically
5 related to the applicability of the securities laws
6 to digital assets in 2017 or 2018?

7 A. I don't remember when we issued the pocket
8 full of coins or there was a -- I forget the name
9 of it -- a jet token, what the dates of those are.
10 Maybe you do.

11 Q. Is that the only one you remember?

12 A. I think there were some others, but I
13 might have been less involved with those. Again,
14 you asked very broadly if that applied to digital
15 assets. So you were --

16 Q. I changed the question slightly --

17 A. Okay.

18 Q. -- to involve the applications of
19 securities laws to digital assets.

20 A. Again, I remember the two, and I'd have to
21 go back and do some work to see if there were
22 others that were relevant.

1 Q. But there wasn't a plethora of no action
2 letters issued by the SEC in this space during your
3 tenure?

4 MR. TENREIRO: Objection to form.

5 A. I remember the ones I remember. So...

6 Q. The two?

7 A. Yes.

8 Q. Okay.

9 A. Actually I think there might have been a
10 third, but, again, I'd have to go back and look.

11 Q. Mr. Figel showed you the Dow report, that
12 was in 2017?

13 A. Yes.

14 Q. And that was issued a couple months after
15 you joined?

16 A. Yes.

17 Q. And what role did you play in the issuance
18 of that report?

19 MR. TENREIRO: Just generally the role.

20 A. I reviewed it, I commented on it, talked
21 to different members -- you know, enforcement about
22 it, talked to the chairman's office about it.

1 Q. And -- and am I correct that that was the
2 first comprehensive report that was issued by the
3 SEC on this space?

4 MR. TENREIRO: Objection to form.

5 A. In terms of comprehensive report on this
6 space, I don't know if you can call it
7 comprehensive. It was applying the law to the
8 facts of the Dow, which was a decentralized
9 exchange, and I don't think the SEC had dealt with
10 the concept of, you know, digital assets
11 transmitting across a decentralized exchange and
12 people investing in that prior to then.

13 Q. So you didn't regard it as a comprehensive
14 report?

15 A. I don't think it applied -- I don't think
16 it has every issue that may be relevant for folks
17 to consider in this space --

18 Q. Was there --

19 MR. TENREIRO: Let him finish, please.

20 MR. FLUMENBAUM: I'm sorry. I thought --
21 I thought you had.

22 Was there any report issued prior to the

1 Dow that you felt was more comprehensive?

2 MR. TENREIRO: Object to form.

3 A. Yeah. Comprehensive with respect to a
4 decentralized exchange, no. I'd have to go back
5 and look at things the staff did before I got there
6 to have a complete answer, but I haven't done that.

7 Q. Did you -- you stated that you did not
8 mention in any of your due diligence meetings with
9 [REDACTED] and Buterin that you were going to give a
10 speech relating to Ether; is that correct?

11 A. Yeah. I don't recall mentioning the
12 speech.

13 Q. Do you know if their counsel was aware
14 that you were going to give a speech?

15 MR. TENREIRO: Object to form.

16 A. I don't know what counsel knew or didn't
17 know in terms of, you know, looking at a set of
18 conferences that were coming up and seeing that I
19 was speaking.

20 Q. Did you mention it to Mr. Kim when you had
21 your one-on-one call with him?

22 MR. TENREIRO: Object to form.

1 A. I don't remember talking to him about it.

2 Q. Well, your speech was coming up on
3 June 14th.

4 A. Right.

5 Q. The meeting with Buterin had been delayed,
6 you know, by then, correct?

7 A. I think that's right if I recall the
8 e-mail I saw.

9 Q. You were going to meet with him in May and
10 you were pushing to get a meeting together prior to
11 your speech, correct?

12 MR. TENREIRO: Object to form.

13 A. To the extent the speech was going to
14 speak about Ethereum and we wanted to make sure we
15 had as much information as possible about it, it
16 was useful to talk to them ahead of time.

17 Q. And didn't you communicate that to
18 Mr. Kim?

19 A. Again, I don't remember saying I needed to
20 talk to him about this speech. We usually are
21 pretty careful about what we're going to say in
22 speeches before we actually give the speech.

1 That's just normal policy. So I don't have any
2 recollection of doing that. It wouldn't be my
3 policy to do that.

4 Q. Did they have any -- to your knowledge,
5 did their lawyers know that you were going to give
6 a speech --

7 MS. KELLY: Object to form.

8 Q. -- about Ether?

9 A. Again, I don't know what their lawyers
10 knew from sort of the public information that was
11 out there about the speech, but I don't believe so.

12 Q. Did you authorize anybody in your staff to
13 tell the lawyers?

14 A. Not that I recall, no.

15 Q. When did you first announce that you were
16 going to give the speech at the conference on
17 June 14th? When was that first --

18 A. I don't think I ever --

19 MR. TENREIRO: Object to form.

20 A. I don't think I ever -- oh, sorry. I
21 don't think I ever announced it. I think maybe
22 Yahoo put something out, but I don't recall saying

1 here's an upcoming thing I'm speaking at.

2 Q. Did any of the other four commissioners
3 ask you why you had not sent a copy or a draft of
4 your speech to them?

5 MR. TENREIRO: Object to form and
6 objection on deliberative process grounds.

7 MR. FLUMENBAUM: What's deliberative about
8 that?

9 MR. TENREIRO: You're asking him what four
10 commissioners told him about the copy of the
11 speech.

12 MR. FLUMENBAUM: I'm asking did they
13 complain to him that they hadn't seen a copy of the
14 speech. That's not deliberative.

15 MR. TENREIRO: Did you -- well, you
16 haven't even established that he even talked to
17 them afterwards about the speech. So why don't we
18 start there and see where we can go with this.

19 MR. FLUMENBAUM: All right. Do you recall
20 any conversations with any of the commissioners
21 other than Mr. Clayton about your speech?

22 A. I would meet with the commissioners --

1 each commissioner individually periodically,
2 usually once every two to three weeks, sometimes
3 less or more depending on people's schedule, and I
4 believe after the speech it probably was a topic of
5 conversation.

6 Q. Well, let's try to break it down in terms
7 of timing. Did you have any conversations with any
8 of the four commissioners relating to the speech
9 prior to the speech?

10 MR. TENREIRO: Yes or no.

11 A. I may have. You know, each one of them I
12 would have -- I don't remember a specific
13 conversation talking about the speech. One of the
14 things I did in these periodic meetings with them
15 was tell them what I'm doing.

16 Q. After the speech do you recall a
17 conversation with any of the four commissioners
18 about your speech?

19 A. Generally I have a recollection that I
20 talked to folks about giving the speech.

21 Q. All right. Who do you recall talking to?

22 A. I don't have a specific recollection of

1 speaking to, you know, Commissioner Roisman or it
2 would have been maybe Kara Stein at that point or
3 Commissioner Peirce, but I have a recollection of
4 generally talking about the speech with
5 commissioners in those meetings.

6 Q. And what do you recall them saying to you
7 about the speech?

8 MR. TENREIRO: So I'm going to instruct
9 you not to disclose deliberations or, you know,
10 conversations that are deliberative. If they --
11 please. If they, you know, expressed general
12 thoughts on the speech that are not, you know, good
13 job or things like you talked about earlier, you
14 can answer that, but do not disclose deliberations
15 about topics that, you know, commissioners or the
16 staff might be considering as they relate to the
17 speech if you can.

18 A. Your question is what was the gist of
19 what --

20 Q. What was the subject -- what was discussed
21 between you and any of the four commissioners that
22 you can recall about your speech?

1 A. Again, I don't have a specific
2 recollection of any one commissioner and I having
3 that conversation. I have a general impression
4 that I talked to them about it and that they
5 generally were supportive of the speech.

6 Q. Nobody was critical of the speech?

7 A. Not that I recall.

8 Q. And no one complained to you that they
9 would have liked to have seen a draft of it prior
10 to it being issued?

11 A. Not that I recall. Other guidance we put
12 out I've had that, you know, experience, but not
13 with this one that I recall.

14 Q. Now, can you take a look Hinman
15 Exhibit 17. This is, again, [REDACTED] related. This
16 goes to the April 2018 e-mails. It's Exhibit 17.

17 MR. TENREIRO: Is this the one with the
18 questions?

19 MR. FLUMENBAUM: No. It's a different
20 one.

21 MR. TENREIRO: Do you have a clean one?
22 Okay. Here's this one. So SEC-LIT-E-MAILS-331453?

1 MR. FLUMENBAUM: Yep.

2 MR. TENREIRO: Okay. Thank you.

3 BY MR. FLUMENBAUM:

4 Q. Mr. Figel asked you about this e-mail.

5 Was it unusual for you to send an e-mail directly
6 to someone in Mr. [REDACTED] position?

7 MR. TENREIRO: Object to form.

8 A. What do you mean by his position?

9 Q. Well, he was the head of the Ethereum
10 foundation, [REDACTED] somebody who -- whose asset
11 you were investigating.

12 MR. TENREIRO: I object to the form.

13 MR. FLUMENBAUM: Well, I was trying to --

14 A. I mean, he's the only person that fits
15 that category. So yes. I had not sent him an
16 e-mail earlier.

17 Q. It appeared to me to be a pretty informal
18 kind of e-mail, "Dear [REDACTED]"

19 A. Uh-huh.

20 MR. TENREIRO: Object to form.

21 Q. You'd only met him once before?

22 MR. TENREIRO: Is there a question?

1 Object to form.

2 A. What's the question?

3 Q. Had you met him only once before?

4 A. Maybe once or twice.

5 Q. Were you friendly with him?

6 A. Yes.

7 Q. And where did you meet him once or twice
8 before the April 12th time?

9 A. I believe they had come into the SEC.
10 April 12th? Yes, I think they came in late '17,
11 yeah. You may have something --

12 Q. Was there an investigative file relating
13 to Ether?

14 MR. TENREIRO: Just answer yes or no.

15 A. I don't know.

16 Q. Was there an investigative file relating
17 to Bitcoin?

18 A. I don't know. I don't know of one I
19 should say.

20 Q. Did you ever see a file of documents
21 relating to Ether?

22 MR. TENREIRO: Object to form.

1 A. A file of documents relating to Ether?

2 Q. Yes.

3 A. What's that mean?

4 Q. A folder of documents, a Redweld of
5 documents.

6 MR. TENREIRO: Relating to Ether? Not
7 just an investigative file, but anything to Ether?

8 MR. FLUMENBAUM: Right.

9 A. I don't recall a file of Ether documents.

10 Q. Well, I'm trying to get a sense as to, you
11 know, where was the repository of information
12 relating to Ether prior to April of 2018. Maybe
13 you can help me on that.

14 MR. TENREIRO: Object to form.

15 A. Again, I think we had met with Ether.
16 Staff would normally, you know, have collected
17 notes or thoughts on a meeting like that. There
18 may have been a slide deck that people hung on to.
19 It would really be up to -- it wasn't usually my
20 role to keep the files.

21 Q. I didn't expect you would.

22 A. I know you don't. I'm sorry. So, you

1 know, it would generally be the folks that were
2 responsible for the meeting, whether that would be
3 Val Szczepanik or my counsel or chief counsel's
4 office. Someone other than me would be keeping a
5 file.

6 Q. Do you recall a slide deck relating to
7 Ether?

8 MR. TENREIRO: Object to form.

9 A. I saw a slide -- sorry. I saw a slide
10 deck earlier, but it -- I didn't really recall
11 seeing that earlier. A slide deck earlier today.
12 I don't remember seeing it prior to today.

13 Q. Okay. And do you have any recollection of
14 having seen a slide deck relating to Ether, the
15 Foundation, [REDACTED] on or around April 2018?

16 MR. TENREIRO: Object to form.

17 A. Again, I don't know the dates. I don't
18 remember this slide deck. I think they had a slide
19 deck on the news idea that they had.

20 Q. When you wrote your speech, you know, the
21 June 14th speech, did you have any documents in
22 front of you that Ether had given you?

1 MR. TENREIRO: Go ahead.

2 A. The first draft of that speech would have
3 been done by my counsel most likely. I think I may
4 have outlined it for them or -- you know, I don't
5 remember the exact process. So I wouldn't be
6 sitting down trying to pull together a bunch of
7 things. I'd be reading the draft.

8 Q. Which counsel do you recall drafted the
9 original?

10 A. I think probably Michael Seaman.

11 Q. And did he give you the draft after he
12 finished it?

13 A. We exchanged drafts over a period of time.

14 Q. And did he show you any document --
15 factual documents that formed the basis for
16 whatever draft he gave you?

17 MR. TENREIRO: Answer yes or no, please.

18 A. No.

19 Q. And do you know if he had any factual
20 documents at the time he prepared his draft?

21 A. What do you mean by a factual document
22 here? I'm not quite sure.

1 Q. Well, facts about Ether, about the
2 Foundation, about -- about whether it's
3 sufficiently decentralized. I mean, you weren't
4 making this stuff up, I assume?

5 MR. TENREIRO: Objection to form and only
6 answer that question yes or no.

7 A. I guess no, I wasn't making it up.

8 Q. So there was some factual basis that
9 somebody had that you were relying on?

10 MR. TENREIRO: Objection to form.

11 A. Yes. There was a lot of diligence done,
12 again, before -- first of all, this speech relates
13 not just to Ether, let's just remember that. It's
14 a broader speech than that. It talks about all
15 kinds of other things, not just Ether. But with
16 respect to the Ether matter, we wouldn't have just
17 made that up, as you say. We did some diligence
18 and came to some thoughts around that that were
19 appropriate for the speech.

20 Q. Was there any diligence that you can
21 recall other than the meeting that you had with
22 Buterin, et al., on June 8th?